

* * REASONS FOR AMENDMENTS AND REMARKS * *

Applicant greatly appreciates the Examiner's time in the telephone interview on February 14, 2008. Examiner Lastra, Kyle Newton, and Michael Wever participated in the interview. The interview principally centered around a discussion of the Sash reference and Claims 1, 6 and newly proposed Claim 24. With the Examiner's comments in mind, the Office Action of November 28, 2007, has been revisited and thoroughly studied. A sincere and earnest effort to respond to the Examiner's Office Action has been made herein. Accordingly, reconsideration and allowance of the subject claims are respectfully requested.

I. Amendment to Specification

Applicant has amended the specification to delete a typographical error in which a reference to "telephone appliances" was included in this application. It is believed that Applicant's prior counsel inadvertently "copied and pasted" this from another application that he was handling, but telephone appliances clearly have no relevance to this application.

II. Claim Amendments

Applicant has amended Claims 1 and 6 to further clarify certain aspects of the invention. Claims 3, 20 and 21 have been cancelled without prejudice. New Claims 24-35 have been added.

III. Rejections under 35 U.S.C. 112, Second Paragraph

The Examiner noted a lack of antecedent basis for "the recruiting up-line team member" in Claims 6 and 23. This has been corrected.

The Examiner indicated that Claims 20 and 21 were indefinite. Since these claims have been cancelled without prejudice, these rejections are moot.

IV. Rejections under 35 U.S.C. § 102(e)

The Office Action rejected Claims 6-9, 12, 13 and 15-22 under 35 U.S.C. § 102(e) as anticipated by Sash (US 2005/0075925). These rejections are respectfully traversed.

Sash describes a web-based address book with a marketing module, which allows people to refer products and information to people who would be interested. Sash at ¶ 114. The goal of the marketing module is to allow companies (“marketing clients”) to utilize a person’s contacts for targeted marketing. Id. The underlying reason for this type of marketing is to have the consumer (“referrer”) who just purchased a product to recommend it to people he/she knows (“contacts”) who would be the most interested in that product. Id. It is important that the referrer be an independent source from the company. Sash at ¶ 115. The companies (i.e., marketing clients) select the marketing campaigns to be chosen by the referring consumers. Sash at ¶ 128 (“The benefit of this approach is that it shields the parameters from being changed by the end user”). The system places restrictions on who the consumer can refer to the company to increase the effectiveness of the marketing campaign. Id. In exchange, the company may give the referring consumer some sort of compensation, such as “airline miles” or a discount on future purchases. Sash at ¶ 129.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” See

MPEP § 2131. There are numerous features recited in Claim 6 that are not disclosed, either expressly or inherently, in Sash. The following are examples of claimed features not described in Sash.

Claim 6 recites a “hierarchal relationship” between the new member and the recruiting up-line team member(s), which is not described by Sash. In the hierarchy recited in Claim 6, the active flow of marketing data between the new member and the up-line member is vital. This is important because the new member may need help from the more experienced up-line member to “close the deal” with a potential prospect. This collaboration is highlighted in steps (h) and (k), in which the contact report is sent to and used by both the up-line member(s) and the new member. This hierarchical dynamic is completely missing in Sash.

Claim 6 includes a neuro dynamic profile (“NDP”) in the contact report. As discussed in the application, the NDP is an analysis from data captured during a Web site experience:

The neuro dynamic profile (NDP) is an analysis of the personality type, communication style, motivation strategy, decision strategy and other psychological profiled information developed from the data captured during Web site user experience. Basic personality types that can be determined include aggressiveness, patience, intelligence and practicality. A communication style is based on whether the guest shows a predilection to information presented in a visual, auditory, kinetic or analog/digital fashion. A motivation strategy can be deduced from the guest's tendency to move away from pain or to move toward pleasure. A decision strategy is evidenced through the guest's tendency to collect and base a decision based on information from others or internalize the information for self-determination.

The Examiner’s reliance on Figures 27a and 27b of Sash to allegedly teach the NDP is misplaced. Figure 27a is an index of persons to whom the consumer referred products or sent

bulletins. There is nothing in Figure 27a that teaches or suggests the NDP. Figure 27b shows a feedback history regarding referrals and an index for a bulletin. This also does not teach or suggest the NDP, as discussed more fully below with respect to Claim 1.

Therefore, Applicant respectfully asserts that Claim 6 (and those dependent thereon) should be allowed.

V. Rejections under 35 U.S.C. § 103(a)

Claims 1, 3-5, 10 and 23 were rejected under 35 U.S.C. § 103(a) as obvious of Sash (US 2005/0075925) in view of Applicant's background of the invention. These rejections are respectfully traversed.

To establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested by the prior art. See MPEP § 2143.03. Independent claim 1 includes several features not disclosed or suggested by Sash, as described below.¹

The Examiner acknowledges that Sash fails to teach the tracking in step (b) of Claim 1. Office Action of 11/28/2007 at 8. However, the Examiner relies on the type of tracking discussed in the present application's background. Id. The type of tracking discussed in the background is quite different than the claimed invention. The background describes aggregated browser activity, not the individualized tracking of an identified guest as recited in Claim 1:

These prior art user tracking methods produce limited information to yield an incomplete response to market the potential client since the information gathered is not specific in nature. The particular interest of the individual browser in the product may not be directly addressed or addressed in way that may lose the sale.

¹ Many of the steps in Claim 23 are the same as Claim 6. Applicant will not reiterate these arguments for Claim 23 that have been made above regarding Claim 6 for sake of brevity.

It is well known in the marketing industry that personal contact based on personal information yields the best results

Published Application at ¶ 7. Here, Claim 1 recites tracking of “the guest” that has been identified. Due to the follow-up marketing recited in step (g) of Claim 1, the distinction between aggregate tracking and individualized tracking is significant. With the aggregate tracking discussed in the background, there would be no way to follow up with a particular guest to “directly market ... by at least one of a telephone call and a face-to-face meeting” as recited in Claim 1.

In the interview, the Examiner mentioned that “cookies” are a well known technique for individualized tracking of some web activity. As discussed in the interview, Applicant is very familiar with “cookies,” but the claimed invention of Claim 1 is significantly different. For example, Claim 1 in step (e) recites “storing the contact report [which includes the tracking information] under a contact management program file.” This is different than a cookie, which typically is stored in a text file within a folder under a web browser directory. Moreover, Claim 1 includes step (f) in which the contact report is moved to the down-line member and one or more up-line members. A cookie is not moved, but resides in a fixed location on the user’s computer (and can be deleted at the user’s discretion). Clearly, there is no movement of a cookie to a down-line member and an up-line member as recited in Claim 1.

Moreover, Claim 1 recites the step of “creating a neuro dynamic profile particular to each guest, where the neuro dynamic profile is characterized by personality type, communication style, motivation strategy and decision strategy,” which is not taught or suggested by Sash. The Examiner’s assertion that Figure 27b of Sash teaches this feature

is untenable. See Office Action of 11/28/2007 at 8. The portion of Figure 27b relied on by the Examiner is merely a chart showing feedback by a person to whom products/services were referred. A copy of the chart from Figure 27b is reproduced below:

productHawk.com						Welcome Mike Smith
Feedback History for Katie Rose Jones						
Company	Product	Feedback	Write back	Action	Description	Personalized message
Wyndham Amazon.com	Hotel Book	Negative Positive	Can't afford it Loved it.	None Referred	Aruba Harry Potter and	Everyone was so helpful and
Broadway	Show	Positive	Great show	Purchased	The Magic Flute	
<div>Ok</div>						

The characterization of this feedback chart as “a neuro dynamic profile” which “teaches that Katie Rose Jones has an intelligent personality that likes books and shows, likes to communicate using visual feedbacks, also has a decision strategy of based decision on reviews from others and also has a motivation strategy of receiving pleasure from her actions” is a classic case of impermissible hindsight. These comments about Katie Rose Jones are made out of whole cloth. Absent the impermissible hindsight from Applicant’s invention, there would be no reason to characterize the feedback chart of Sash in this manner. See In re Lee, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002) (where the examiner stated that references should be combined because “the automatic demonstration mode is user friendly and it functions as a tutorial,” the obviousness rejection was reversed because examiner's reasoning was found insufficient as being based on “subjective belief and unknown authority.”).

Moreover, the flow of the contact report (which includes the guest's identity, tracking information, and neuro dynamic profile) in the hierarchy is important. As discussed in the interview, this is quite different than a typical cookie that resides on a user's computer. Here, there is a flow of the contact report to the down-line member and up-line members. This flow of data is critical in the hierarchical dynamic of Claim 1. Namely, this facilitates the use of the contact report by the down-line and up-line members to directly market to the guest in an off-line manner (e.g., over the phone or in a face-to-face meeting).

Therefore, Applicant respectfully asserts that Claim 1 (and those dependent thereon) should be allowed.

VI. New Claims

Applicant has added new Claims 24-35. No new matter has been added.

Independent Claim 24 includes several features not taught or suggested by Sash. For example, the step of "providing a multi-level marketing network ("MLM") with a plurality of members cooperating in a hierarchical manner, wherein the MLM includes an up-line member that is linked to a down-line member in the MLM." This step has support at least in Paragraph 35 of the published application (2003/0149572). This type of hierarchy is not taught or suggested by Sash.

Claim 24 also includes the step of directing a potential member of the MLM to access a personalized website of the down-line member. As discussed in the interview, the down-line member requests the potential member to visit his/her own personalized website. This is significantly different from Sash, in which the consumer refers a contact

to a third party company's website. Support for this step can be found at least in Paragraph 29 of the published application.

The "sending" and "marketing" steps recited in Claim 24 also distinguish Sash. It is important that the potential member's identification and tracked information are sent to both the down-line member and the up-line member. This allows the up-line member to monitor the marketing activity of the down-line member. This aids in the "collaborative effort" of marketing by the up-line member and the down-line member, which is recited in the marketing step. As discussed in the application, this allows the more experienced up-line member to help a less experienced down-line member to close the potential member:

The new member receives a contact report with guest information in a manner similar to the up-line team member but the up-line team member(s)' TCS is updated with the new user's contact and guest information 214. This reporting method allows the up-line team member(s) to monitor the new user's activity and enable the up-line team member(s) to collaborate with an inexperienced or disadvantaged new user on the guest information and follow up together, perhaps a three way telephone call, with the interested guest 215. If the guest elects to also join the Marketing Network Service, become a representative under the MNS, then the process previously described to create the up-line team member and new member team repeats 216 where the (old) new member becomes an up-line team member to the next member and the up-line team member is now a up-line team member to both the new and next down line members 217. In this way, a collaborating team is formed within the service network.

Published Application at Paragraph 37. Sash is completely devoid of any description of a collaborative marketing effort between an up-line member and down-line member in a hierarchical marketing network, such as recited in Claim 24. This type of collaborative marketing effort is further highlighted in the dependent claims. For example, Claim 28 recites a "three-way call to the potential member by the up-line member and the down-line member."

Claims 30-35 focus on specific aspects of the neuro dynamic profile. As discussed above with respect to Claims 1 and 6, Sash fails to disclose a neuro dynamic profile. Moreover, Claims 32-35 describe a specific manner from which aspects of the neuro dynamic profile are determined. Again, Sash fails to describe these features.

Therefore, Applicant respectfully asserts that Claim 24 (and those dependent thereon) should be allowed.

VII. Conclusion

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. To the extent additional fees are required, please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 021010 (83291) and please credit any excess fees to such deposit account.

Respectfully submitted,

/MEW/
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